



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of:

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/172747

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 10, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the Rock County Department of Social Services ["County"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone from Madison, Wisconsin on April 26, 2016. At petitioner's request a Hearing scheduled for April 7, 2016 was rescheduled. The Hearing for this matter was held at the same time as the Hearing for the following closely related matter concerning the same petitioner: CCO-172748. It is noted that in the MOP-172749 matter the County withdraw its Medical Assistance ["MA"] overpayment Claim against petitioner (MA Claim # [REDACTED]; December 1, 2014 to June 30, 2015; \$424.70) and that MA Claim now has a zero (\$0.00) balance; petitioner then withdrew her request for a Hearing in that MA matter.

The issue for determination is whether it was correct to establish the following Claim against petitioner for overpayments of FS: Claim Number [REDACTED]; December 1, 2014 to April 30, 2015; \$802.00.

There appeared at that time via telephone the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

BY: [REDACTED], ESS

Rock County Department of Social Services  
1900 Center Avenue  
PO Box 1649  
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:  
Sean P. Maloney  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]; 34 years old) is a resident of Rock County, Wisconsin.
2. The County established the following Claim against petitioner for overpayments of FS: Claim Number [REDACTED]; December 1, 2014 to April 30, 2015; \$802.00.
3. Petitioner's household had earned income in the form of tips which was not budgeted by the County when calculating petitioner's FS eligibility.
4. The FS overpayments in *Findings of Fact* #2, above, resulted from the fact that due to County error petitioner's tip was not budgeted when calculating FS during the time period in question.

### **DISCUSSION**

All FS overpayments, regardless of fault, must be collected. 7 C.F.R. § 273.18(b) (2015); See also, *FoodShare Wisconsin Handbook* ["FWH"] 7.3.1.1 & 7.3.2.1. Therefore, a person can be held liable for an FS overpayment and made to repay it even though the overpayment was not their fault.

Petitioner does not deny that her tip income was not budgeted when calculating FS during the time period in question and that this resulted in the overpayments. She argues that she should not have to repay the overpayments because she dutifully reported her household income and "was constantly submitting paystubs." "I submitted income often." "I did everything I was told to do."

The error that caused the overpayment in this case was made the County and not by petitioner. It was not petitioner's fault. Nevertheless, this resulted in an overpayment. As noted above, all FS overpayments, regardless of fault, must be collected. Therefore, petitioner may be made to repay the above overpayment even though it was not her fault. Petitioner is, understandably, not understanding of this. However, it is the law.

### **CONCLUSIONS OF LAW**

For the reasons discussed above, petitioner is liable for the FS overpayments detailed in *Findings of Fact* #2, above, and must repay them.

**NOW, THEREFORE, it is**

### **ORDERED**

that the petition for review herein be and the same is hereby DISMISSED.

## REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 5th day of May, 2016

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\sSean P. Maloney  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on May 5, 2016.

Rock County Department of Social Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability